IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JAIPUR BENCH, JAIPUR

O R D E R

D.B. Civil Writ Petition No.5155/2000

Mrs. Mary Gardner, aged about 39 years, resident of Stephan Village, No. 1077/13, Sidharth Nagar, Chola Bata Road, Ajmer

.....Petitioner

Versus

1. The Union of India through General Manager, Western Railway, Churchgate, Mumbai

2. Divisional Personnel Officer, DRM Office, Western Railway, Ajmer

.....Respondents

3. Central Administrative Tribunal through Registrar, Jaipur Bench, 17 Shivaji Marg, Near Diggi House, Ram Singh Road, Jaipur

.....Proforma Respondent

Date of Order :: 10th July, 2007

PRESENT

Hon'ble Mr. Justice R.M. Lodha
Hon'ble Mr. Justice Mohammad Rafiq

Mr. Ashwinee Jaiman for Mr. R.N. Mathur for the petitioner
Mr. Shankar Lal Sharma for Mr. Suresh Pareek for respondents No. 1 & 2

Oral Order (**Per R.M. Lodha, J.**):-

The petitioner was appointed as Assistant Teacher in Railway Primary School in the month of March, 1981. On 30th October, 1995 she was promoted to the post of Head Mistress of the Railway Primary School. However the order of promotion was subsequently withdrawn on 15th April, 1999 and she was reverted to the post of Assistant Teacher. The order of reversion came to be passed as in the opinion of the respondents she did not possess the requisite qualification. She challenged the order of reversion dated 15th April, 1999 before the Central Administrative Tribunal, Jaipur Bench, Jaipur. Her challenge to the order dated 15th April, 1999 before the Central Administrative Tribunal was unsuccessful and hence the present writ petition.

2. The counsel for the petitioner urged that as per the Circular of the Railway Board dated 11.1.1988, in case of primary school teacher and trained graduate teacher the condition of prescribed level of higher qualification may be waived and opportunity be granted to such teacher to acquire the prescribed level of higher

qualification. According to the counsel for the petitioner the petitioner ought to have been given an opportunity to acquire the prescribed qualification and promotion that was already accorded to her could not have been withdrawn all of a sudden after three and a half years of the promotion. He would also submit that there was a practice prevalent with the respondents in promoting Head Master / Head Mistress without the prescribed higher qualification.

3. The submissions of the counsel, after due reflection by us, do not stand scrutiny. The petitioner possesses the academic qualification of (i) BA; (ii) BSTC (Basic Senior Teacher Certificate); (iii) Saraswati Upadhi (equal to M.A.) and (iv) Vidushi (Honours). It is not in dispute that a Head Master or Head Mistress in Railway Primary School has to be trained graduate teacher. The qualification of the trained graduate teacher prescribed by Railway Board in the Circular RBE 252/89 is thus:

> 1. IInd class Bachelor's Degree with one of the following group of subjects;

(i) Physics, Chemistry and one subject out of Maths / Botany / Zoology.

(ii) Botany, Zoology and one subject out of Physics / Chemistry.

(iii) English Literature / Hindi Literature / Sanskrit Literature; and

(iv) Any two subjects out of English, Maths, Commerce, Economics, Geography, Political Science, History, Agriculture

2. University Degree / Diploma in education / teaching

or

4 years integrated degree course of Regional Colleges of Education of NCERT

3. Competence to teach through the medium, as required

Note. The condition of II class in Bachelor's Degree can be relaxed in respect of promote candidates who have at least 5 years experience as Primary Teachers and also for candidates (both promotees and Direct Recruits) who have a post Graduate Degree in any of the teaching subject referred to in Para I above.

4. The petitioner has second class Bachelor's Degree in one of the group of subjects prescribed

inasmuch as she is B.A. IInd Class (English Literature). However it is admitted position that she has neither University Degree / Diploma in education / teaching nor she has done four years integrated degree course of Regional Colleges of Education of NCERT. She only has Basic Senior Teacher Certificate.

5. Apparently, therefore, she does not possess requisite qualification of trained teacher and consequently she does not possess the qualification for being appointed / promoted to the post of Head Mistress. The question now is; whether the Circular of the Railway Board dated 11.1.1988 relaxes the qualification prescribed in R.B.E. 252/89 referred to in above.

6. The relevant paragraph of Circular dated 11.1.1988 issued by the Railway Board reads thus:

> "In the case of primary school teacher and trained graduate teacher the condition that the placement in the selection grade will be subject to acquiring the prescribed level of higher qualification, may be waived provided these teachers have already completed 18 years of service in the revised pre revised grade structure. Those who have not completed 18 years of service,

> as well as a new entrants, have to acquire the prescribed level of higher qualification for consideration for the selection grade."

7. A close look at the aforesaid paragraph 5 in the backdrop of paragraphs 1, 2 and 3 of the said Circular would show that the said Circular does not have any application in the matter of promotion. It is referable to the award of selection grade under the revised grade structure. Assuming that this circular is applicable in the matter of promotion than what it provides is that acquisition of prescribed level of higher qualification may be waived provided the concerned teacher has already completed 18 years of service in the revised / pre revised grade structure. Admittedly the petitioner had not completed 18 years of service in the revised or pre-revised grade structure at the time of promotion to the post of Head Mistress. She was appointed as Assistant Teacher in March, 1981 and was promoted to the post of Head Mistress on 30th October, 1995. Rather paragraph 5 makes it clear that those who have not completed 18 years of service have to acquire the prescribed level of

higher qualification for consideration of selection grade. In this view of the matter, the petitioner was required to acquire the prescribed level of qualification before she could be considered for promotion.

8. There cannot be any practice in appointment / promotion contrary to Rules governing such appointment / promotion. Even if we assume that earlier few illegal appointments were made or illegal promotions given, that would not legalize the promotion accorded to the petitioner illegally.

9. Every appointment / promotion has to be in accord and conformity with the Rules governing such appointment / promotion. Any appointment / promotion contrary thereto has to go. The very promotion given to the petitioner as Head Mistress of Railway Primary School on 30th October, 1995 was wrong since she did not possess the requisite qualification for such promotion. The order dated 15th April, 1999 corrected the wrong and restored the right position by reverting the petitioner to the

post of Assistant Teacher. In these circumstances the order of the Central Administrative Tribunal cannot be faulted.

10. By way of foot note we may observe that on 30th September, 2005 the petitioner has superannuated and as such also the grievance pertaining to reversion does not survive. Writ petition, accordingly, has no merit and is dismissed with no order as to costs.

Mohammad Rafiq, J. R.M. Lodha, J.